



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GROVER SELLERS
ATTORNEY GENERAL

Honorable Harry Benge Crozier
Chairman and Executive Director
Texas Unemployment Compensation Commission
Austin 19, Texas

Dear Sir:

Opinion No. O-5928

Re: Whether the Lower Colorado River Authority is subject to the provisions of the Texas Unemployment Compensation Act, and whether its employees are entitled to benefits thereof.

We have given careful consideration to your letter requesting the opinion of this department on the captioned subject.

Section 59, Article XVI of the Constitution of Texas, provides that such districts as the Lower Colorado River Authority "shall be governmental agencies and bodies politic and corporate with such powers of government and with the authority to exercise such rights, privileges and functions concerning the subject matter of this amendment as may be conferred by law". The act creating the Lower Colorado River Authority likewise contains this language. Ch. 7, 4th Call Session, 43rd Legislature. The Courts have recognized and so held that these districts created pursuant to the above section and article of the Constitution are governmental agencies and political subdivisions of the State, performing governmental functions and standing upon the same footing as counties and other political subdivisions established by law. Willacy County v. Control and I. Dist. No. 1 v. Abundant, 177 S.W. (2d) 936 and cases cited therein; Lower Colorado River Authority v. Chemical Bank and Trust Co., decided October 31, 1945, but not yet officially reported.

The Texas Unemployment Compensation Act, codified as Article 5221b, Vernon's Civil Statutes of Texas, Annotated, 1925, as amended, provides for each employer subject to the Act to pay taxes with respect to wages paid by it for employment. Section 19 (c) (5) of this Act (Article 5221b-17 (g) (5)), however, provides that:

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"The term 'employment' shall not include:

"(A) Service performed in the employ of this State, or any political subdivision thereof, or any instrumentality of this State or its political subdivisions,

". . ."

Since the Lower Colorado River Authority is a governmental agency, and a political subdivision of this state, and such agencies do not come within the provisions of the Texas Unemployment Compensation Act, it is the opinion of this department that this agency is not subject thereto. As a consequence thereof, it follows that its employees are not entitled to the benefits thereunder.

In reaching the above conclusion, we have not failed to consider the second paragraph of your letter of request in which you direct our attention to cases dealing with remedial or regulatory legislation in which certain State or governmental instrumentalities were subject to such remedial laws upon the basis that they were of a proprietary or competitive nature and thus did not come within the ordinary constitutional inhibition of statutory exemption of governmental instrumentalities.

It is our contention that the Legislature has couched in plain and unambiguous language what employment constitutes and what does not come within the purview of employment. For us to expand upon this plain language would be encroaching upon the province of the Legislature. This is fully brought forth in the case of *Creekmore v. Public Belt Railroad Commission*, 134 Fed. (2d) 576, certiorari denied by the Supreme Court of the United States, from which we quote in part as follows:

"The exclusion provision of Section 3 (d) of the Fair Labor Standards Act is couched in plain and unambiguous language and should be given effect as it is written. Appellant strongly contends, however, that because of the remedial nature of the Act it was the legislative intent to include within its coverage employees such as those working for the Public Belt Railroad Commission for the City of New Orleans; that in operating the railroad the City of New Orleans acts in a purely proprietary capacity; and that employees of the railroad should be within the coverage of the Act.

"In construing the Act the duty of the Court is to determine what employers and employees are within its coverage, not what employees 'should' have been covered, for the question of who 'should' be covered is a matter solely within the province of the legislative branch of the government. The language of Section 3 (d) being plain, its meaning clear, the result reasonable, we see no reason for resorting to extraneous considerations in an effort to construe and give to such language another and different meaning. Cf. *Helvering v. New York Trust Co.*, 292 U. S. 455, 54 S. Ct. 806, 78 L. Ed. 1361; *United States v. Mo. Pac. R. Co.*, 278 U. S. 269, 49 S. Ct. 133, 73 L. Ed. 322."

We are of the opinion that whether or not proprietary or competitive function of a governmental instrumentality or agency should come within the provisions of the Texas Unemployment Compensation Act are matters solely within the province of the legislature of the State of Texas; that the Legislature has by Section 19 (g) (5) in plain language exempted political subdivisions and governmental agencies from the provisions of the Texas Unemployment Compensation Act, whether their functions be competitive or proprietary, and we see no reason to resort to other considerations or efforts to construe such language and give it a different meaning.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Robert O. Koch

Robert O. Koch
Assistant

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APPROVED FEB 5, 1946
Charles Ashley
ATTORNEY GENERAL

